

FREQUENTLY ASKED QUESTIONS

Enrollment and Immigration Issues

Can schools require proof of citizenship to attend?

NO. Immigration or citizenship status is irrelevant to a student's right to attend school. All children, including undocumented immigrants, have a constitutional right to attend school. Citizenship inquiries could violate that right by chilling undocumented students from attending school. Schools should not, under any circumstance, inquire into immigration status in a way that has the purpose or effect of chilling immigrants from attending or enrolling.

Can schools require proof of residency in the appropriate school or district boundary?

YES. A state or district may establish bona fide residency requirements and thus might require that all prospective students show some proof of residency. But schools must allow residency documentation, such as phone or utility bills, that do not elicit immigration status or chill undocumented students from attending school. And homeless students, as defined by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 et seq., must not be required to furnish proof of residency within the district under any circumstance. Homeless children and youth have a federal legal right to enroll in school, even if their families cannot produce the documents establishing residency.

What sorts of documentation should the school use to establish residency?

Districts must permit parents to establish residency by providing a variety of documents as proof of residency and cannot require documents that would bar or chill undocumented students from attending. Such documents include: a telephone or utility bill, mortgage or lease document, parent affidavit, rent payment receipts, a copy of a money order made for payment of rent, or a letter from one of the parent's employers. Schools cannot apply different residency requirements to immigrant students than they do to others.

What documentation can schools use to establish that state or district age requirements are satisfied?

Schools can use birth certificates to establish a student's age, but such use must not unlawfully bar or discourage an undocumented student, a student whose parents are undocumented, or a homeless student from enrolling in and attending school. Schools should inform parents that alternatives to birth certificates are allowed, and allow alternative documentation of age such as a religious, hospital, or physician's certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a foreign birth certificate; previously verified school records; or any other documents permitted by law. Foreign-born students must not be barred from attending school.

Should schools ask for students' social security numbers?

NO. Although schools are not categorically prohibited from collecting the social security numbers of prospective or current students by federal law, federal law does govern the

disclosure of such numbers and requires that the confidentiality and security of the social security numbers must be safeguarded. *See, e.g.,* Privacy Act of 1974, Pub. L. No. 93-579, § 7, 5 U.S.C. § 552a (note). But schools cannot deny enrollment to a student for refusing to provide a social security number, and schools should make that fact known to our parents.

If districts would like to use identifying numbers, they should consider creating a randomly selected number for each student. That way, social security numbers are secure and students that do not have such numbers are not chilled from attending school.

Can the school district disclose information to immigration officials or others from a student's education records without the consent of the student or a parent?

RARELY. The Family Educational Rights and Privacy Act of 1974 (FERPA) generally prohibits school districts that receive Federal funds from the Department of Education from disclosing information in a student's education records that alone or in combination with other information can identify that student, without the prior written consent of a parent or the student (if that student is 18 years of age or older or attends a postsecondary institution). *See* 20 U.S.C. §1232g. In very rare circumstances that are almost never met, a school district may disclose information from a student's education records without the student's or parent's consent.

Should schools communicate enrollment procedures in languages other than English?

YES. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703 require a school district to meaningfully communicate material information about enrollment. As such, enrollment and other documents should be translated into languages other than English and schools should be able to respond to parents who do not speak English.

Should schools proactively show immigrant parents and their children that their children are welcome in school?

YES. School districts should proactively notify immigrant parents and communities about their rights to send their children to public school. Districts should engage in outreach to communities to inform parents that all students who are residents in the district are welcome to attend the district's schools.

Bullying and Harassment

What should a student do if bullied or harassed by a classmate because of the student's or family's immigration status or because of the student's or family's religion?

All students, regardless of national origin, immigration status, or religious background, have the right to an education free from bullying and harassment. Harassment and bullying should be reported to a teacher, a school administrator, or the school principal. If the bullying or harassment issue is not resolved at the school site and the district has adopted a policy similar to the NEA model policy, parents and students can use that policy procedure to ensure that the harassment is remedied and prevented. Otherwise, students should bring concerns to the district office. If the superintendent or other district administrators do not respond

satisfactorily, students and their parents should voice concerns at the next meeting of your school board, if comfortable doing so. Students and their families should consult legal counsel if the harassment is not remedied or if future harassment is not prevented.

What do I do if I see a student being bullied or harassed because of the student's race, national origin, immigration status, or religion?

In many instances, bullied or harassed students will not report the bullying or harassment. School staff are responsible for reporting all such incidents to the appropriate staff person (under the model policy above, the school administrator), even when the student doesn't report the harassment. Be sure to follow up to ensure all proper steps have been taken to remedy and prevent the problem. Federal law prohibits retaliation against anyone for reporting illegal harassment or bullying. If an NEA member suffers retaliation for so reporting, contact your local NEA association.

How should a parent, teacher, or student document incidents of bullying or harassment?

Document what happened, if possible, with photos, video, audio, or written statements about the bullying or harassment, and make note of when the harassment was reported. Keep copies of any letters, emails, or written communication sent to the school and that the school sends in response. Log any phone calls or in-person meetings that occur with the school, and take notes if you can, of the date, time, and location of the meeting and what was said.

What if the school fails to respond or takes insufficient action to stop the harassment or bullying or punishes the person who spoke out?

The school is legally obligated to protect students from harassment and stop and prevent it. When a school fails to act, outside help may be needed. NEA members should consult their local NEA affiliate. Students and their families should consider seeking legal counsel.

What can be done about cyberbullying of students?

Cyberbullying, or the use of electronic communications and social media to bully or harass, can be an extension of face-to-face bullying at school. Cyberbullying allows bullies to harass students not just in school but out of school as well. When cyberbullying is an extension of school-based bullying or causes disruption to the educational environment, schools can and should take action to stop the cyberbullying and prevent future incidents.

Do students have a First Amendment right to wear or display racially or religiously threatening images such as swastikas or confederate battle flags?

NO. Students do not have a right to expression that deprives other students of equal educational opportunities. Courts have uniformly recognized that displaying swastikas, confederate flags, and other racially intimidating symbols can and should be prohibited where they deprive other students of equal educational opportunities.

Religious Expression in School

Can students wear religious head coverings even when the school prohibits wearing hats?

YES. Dress codes are not required but schools may enforce dress codes that ensure that students dress in a manner that, in addition to the following guidelines, takes into consideration the education environment, safety, health, and welfare of the student and others.

Under all circumstances, staff and students shall have the right to wear clothes that are expressive of their religious traditions, customs, and beliefs. Consistent with that, staff and students have the right to wear yarmulkes, hijabs, headscarves, and other religiously influenced head or body coverings.

A school's dress code may not be more strictly enforced against religious students than other students.

Are students barred from praying or expressing their religion in school?

NO. Students have the right to express their religion with other students in settings, such as before or after school or during lunch breaks, where student expression is not restricted to school matters. Religious expression shall not be burdened more than any other personal expression.

Consistent with this, religious messages on T-shirts and the like may not be singled out for suppression. Students may wear religious attire, such as, among other things, yarmulkes, hijabs, and head scarves, and students may not be forced to wear gym clothes that they regard, on religious grounds, as immodest.

Can staff encourage students to engage in religious activities?

NO. Students both have the right to be free from staff encouragement of religion and the right to express their own religious beliefs and traditions.

Teachers and school administrators, when acting in those capacities, are representatives of the state, and, in those capacities, are themselves prohibited from encouraging or soliciting students for religious or anti-religious activity. When acting in their official capacities, staff may not engage in religious activities with their students.

Education about the world's religions, however, can and should be part of the curriculum.